

DEPARTMENT OF AGRICULTURE
STATE OF SOUTH DAKOTA
SERVICE CONTRACT
AGREEMENT # _____

THIS AGREEMENT IS HEREBY made and entered into by and between the South Dakota Department of Agriculture, an agency of the State of South Dakota, 523 East Capitol Ave., Pierre, SD 57501-3182, (hereinafter "State") and **Baker Timber Products, Inc., of 13536 S. Hwy 16, Rapid City, SD, 57701, (hereinafter "Contractor")**.

The State hereby enters into this Agreement for services with Contractor in consideration of and pursuant to the terms and conditions set forth below.

1. The Contractor will perform those services described in the Resource Work Plan, attached hereto as **Exhibit A** and by this reference incorporated herein.
2. The Contractor's services under this Agreement shall commence on the **25th Day of October, 2010 and end on the 25th Day of October, 2011**, unless sooner terminated pursuant to the terms hereof.
3. The Contractor will not use State equipment, supplies or facilities. The Contractor will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.
4. The State will make payment for services upon satisfactory completion of the services on each unit as detailed in Exhibit A. The contract amount is an amount not to exceed \$141,750.00. The State will not pay Contractor's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26.
5. The Contractor agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

6. The Contractor, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

The Contractor shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

When applicable the Contractor agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00.

C. Business Automobile Liability Insurance:

The Contractor shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

The Contractor shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, Contractor shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Contractor agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Contractor shall furnish copies of insurance policies if requested by the State.

7. While performing services hereunder, the Contractor is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

8. Contractor agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Contractor or the State to liability. Contractor shall report any such event to the State immediately upon discovery.

Contractor's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Contractor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Contractor to report any event to law enforcement or other entities under the requirements of any applicable law.

9. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Contractor breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Contractor at the time of termination may be adjusted to cover any additional costs to the State because of Contractor's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Contractor it is determined that Contractor was not at fault, then the Contractor shall be paid for eligible services rendered and expenses incurred up to the date of termination.

10. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature

fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

11. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. The Contractor will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

14. The Contractor may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Contractor will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Contractor will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

15. Contractor hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by the Contractor in connection with its performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by the Contractor without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

16. The Contractor certifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Contractor further agrees that it will immediately notify the State if during the term of this Agreement Contractor or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

17. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. **Notices shall be given by and to Andrew Tate, on behalf of the State, and by Robert Baker, Jack Baker, and Mike Stoner on behalf of the**

Contractor, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

18. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

19. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

20. **PROOF OF AUTHORITY TO SIGN:** If the contracting party is not a natural person, **evidence of authority** granted by the legal entity to the natural person who signs this agreement on behalf of the legal entity **must be attached hereto** as a condition precedent to any obligation by the State of South Dakota under the agreement. A copy of a resolution of the governing body or minutes of a regular meeting showing approval of the agreement or an ordinance approving the agreement and authorizing a named person to sign the agreement shall be adequate proof of authority.

In Witness Whereof, the parties signify their agreement by signing below.

STATE

CONTRACTOR

BY: [Signature]
Jon L. Farris, Acting Secretary,
South Dakota Department of Agriculture

BY: [Signature]
NAME JACK BAKER
TITLE _____

Dated this 9 Day of Nov, 2010.

Dated this 15 Day of OCT, 2010

Standard form pre-approved by: (deviations require initials)

Reviewed by:

DOA Staff Attorney _____ (on _____ date)
Attorney General's Office _____ (on _____ date)
Risk Management _____ (on _____ date)

- State Agency Coding (MSA Center) _____.
- State Agency MSA Company for which contract will be paid _____.
- Object/subobject MSA account to which voucher will be coded _____.
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract _____.

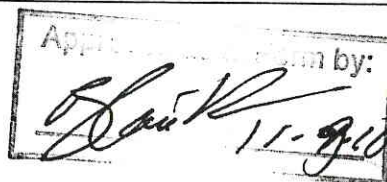


Exhibit A:

Payment:

Baker Timber Products is to be paid as outlined in the table below upon completion of thinning work on each unit meeting specifications below and upon completion of pile/slash burning. Should no burning be required on a unit, the burning payment will be made upon completion of thinning. The State reserves the right to reduce the number of acres on any unit, and in such case the payment for that unit will be reduced by an amount equal to the number of acres removed from the project multiplied by the total per acre cost for that unit. The State reserves the right to add acres and/or units to the project at a cost to be agreed upon by the Contractor and the State.

Unit Name	Acres	Thinning Payment	Burning Payment	Total Cost	Total Cost Per Acre
1	70.63	\$28,252	\$10,974.49	\$39,226.49	\$555.38
1.A	3.67	\$3,303	\$570.24	\$3,873.24	\$1,055.38
1.B	15.16	\$13,644	\$2,355.56	\$15,999.56	\$1,055.38
1.C	4.91	\$4,419	\$762.92	\$5,181.92	\$1,055.38
1.D	9.41	\$8,469	\$1,462.13	\$9,931.13	\$1,055.38
2	20.26	\$8,104	\$3,148.00	\$11,252.00	\$555.38
2.E	2.03	\$1,827	\$315.42	\$2,142.42	\$1,055.38
2.F	21.17	\$19,053	\$3,289.39	\$22,342.39	\$1,055.38
3	47.89	\$19,156	\$7,441.15	\$26,597.15	\$555.38
3.G	4.93	\$4,437	\$766.02	\$5,203.02	\$1,055.38
Total	200.06	\$110,664	\$31,085.32	\$141,749.32	

SCOPE OF WORK

The intent of this solicitation and any resultant Agreement is to obtain a contract to perform hazardous fuels reduction work on approximately 200 acres located at the intersection of Highway 16 and Highway 16A in Township 1S Range 6E Section 31 (see maps on pages 10 and 11 of the RFP). All work performed will complement work completed by the Forest Service and SDWFS crews and will meet similar requirements. The goal of any completed project is to mitigate the threat of wildfire in areas of high concern through thinning and fuel break creation. Salvage rights will be granted to the contractor to offset project costs. All material is to be removed for biomass utilization at no cost to the landowner or SDWFS. All material to be left on the project site must be justified in the submitted proposal. All slash not removed from the property will be treated by the contractor according to one of the following methods: piling and burning; chipping; mulching; or grinding. Bidder must specify thinning slash disposal method in the submitted proposal.

THINNING SPECIFICATIONS

- *All ponderosa pine up to 9 inches in diameter at breast height (dbh) are considered in the cutting guidelines.*
- *Dominant and co-dominant ponderosa pine with good form and vigor will be left as leave trees.*
- *All ponderosa pine under 9 inches dbh with stem canker (western gall rust), that are snow bent, or with deformed or broken tops are considered cut trees. Ponderosa pine 9 inches dbh and over are not considered cut trees unless they are deformed to the point one ten foot log cannot be cut from the tree. However ponderosa pines over 9 inches dbh are considered in the overall spacing and stocking guidelines (see next paragraph).*
- *The spacing between leave ponderosa pine tree crowns will be 15 to 25 feet.*
- *Stumps will be level cut to within 6 inches of the ground on the uphill side.*
- *All ponderosa pine 9 inches and under in diameter will be removed from, and within 25 feet of, hardwood trees. Hardwood trees will not be cut unless they are a hazard.*
- *All dead standing snags not posing a threat to the contract crews will be left.*
- *Ponderosa pine will be limbed to minimum of 10 feet or higher if dictated by slope.*
- *Equipment use and access to the project site will be at the discretion of the State of South Dakota.*

PILING

- *Piles to be burned will be a minimum of 4 feet and a maximum of 8 feet in diameter; height will be between 5 and 7 feet or as agreed upon by the Contractor and State.*
- *Piles will not be located under the crown of a live tree and away from stumps if possible.*
- *Burning of piles will be conducted by the contractor as conditions allow:*
 - *minimum of 4 inches of continuous snow cover*
 - *all materials shall be pulled into center for 90% minimum consumption*
 - *piles will be monitored for a minimum of 3 days after last smoke is visible*

CHIPPING/MULCHING/GRINDING

- *Chips will be removed from the property or broadcast with a maximum chip depth not to exceed 4 inches.*
- *Forestry mulcher (Fecon) material size will not exceed 2 inches when possible. Maximum material size allowed is 3 inches in diameter and 2 feet in length.*
- *Material must be flat to ground after mulching.*

Piles created for chipping and removal for utilization will be located in areas agreed upon by the landowner, contractor, and state.

TECHNICAL PROPOSAL:
BUSINESS COST PROPOSAL:

FIRM NAME: BAKER TIMBER PRODUCTS, INC.
CONTACT PERSON AND PHONE NUMBER:

Bob Baker

(605) 348-8338 - office
(605) 381-1589 - cell

The following is our Technical Proposal for the Keystone Wye Fuels Reduction Project.
RFP # SDDAWF000013

Executive Summary.

In general our proposal is as follows. All areas determined to be too steep for mechanical equipment operation will be conducted by a hand crew. We estimate that approximately 55% of the property scheduled to be treated will be done in this way. As for the thinning and hand piling of material on extreme terrain, Baker Timber will subcontract the majority of this work to Dakota Pine Thinning. In these areas none of the material will be removed for biomass utilization. The burning of the slash piles on all of the inoperable terrain will be done by Baker Timber Products personnel.

As for work to be done in the areas in which the terrain allows for the use of mechanical equipment, we propose the thinning be done by feller bunchers such as a Timbco or three wheeled shear. In these areas all material between 3" DBH and 9" DBH will be cut, bunched and skidded by mechanical means to an approved landing area. This material can then be utilized by processing POL material for the Baker Timber post mill or chipped and taken to one of Baker Timbers chip market locations, or any combination of the two. Baker Timber will reserve the right to determine the best way to utilize this material. All material smaller than 3" DBH will be masticated along with any existing slash on the ground. Whenever possible, attempts will be made to treat as much of the project as possible with mechanical means. Any material left behind in the landing areas that is not used for chips or POL will be piled and burned, a dozer will be on site at all times to maintain these large piles. The benefits of using this method on the mechanically accessible ground are; less material to burn because of utilization of a large amount of material, by masticating the smaller and the dead material, mulch will be spread over much of the area disturbed by skidders and feller bunchers, this greatly reduces the risk of erosion, and by burning the unused material in a few central locations rather than many small ones there is less sterilization of top soil.

Our Bid price per acre for mechanically inoperable terrain is \$900.00. Our price per acre on any ground that is mechanically accessible will be \$400.00. Again we estimate that approximately 55% or less of the project will need to be treated by conventional means. All areas will be GPS mapped by Baker Timber Products to insure accurate billing of mechanical vs. conventional acres. A price cap will be put on the conventional acres as to not exceed 55% of the total project acres. For example if the project is found to have 60% of the acres needing to be treated by conventional practices, a maximum of 55% of the acres will be billed at the conventional rate. If

70% of the project is found to be treated by mechanical means the price will be adjusted to the benefit of the state of South Dakota. This price includes all of the steps associated with the scope of work criteria found in section 3.0 of the Request for Proposal. We truly feel that we have a very good sense of the quality of work that is needed to complete the job to the full satisfaction of this agreement and in many cases exceed the required goals of this contract.

Detailed Response.

Description of treatment process.

Conventional work will be done by cutting trees to desired spacing, hand piling all debris, and burning of the piles at a later date when conditions allow.

Mechanical treatment will be as follows: all material will be cut with mechanical felling equipment, and skidded to an approved landing site. The material will then be processed to be utilized in a variety of possible ways such as chips for particle board, post and poles, or ground for boiler fuel. Any slash left in the landing location after these processes will be piled and burned at a time when conditions allow. Any slash or standing trees less than 3" DBH left on mechanically accessible ground will be masticated.

One of the two processes above will be used to complete the project. In all cases Baker Timber Products will use the mechanical process whenever possible to allow for maximum biomass utilization and keep total project costs low.

Unit 1. 108 Acres.

This unit is one of the most accessible units on the Keystone Wye project. To perform our operations on this unit a few landing sites will be needed in the large meadow in the central part of the unit. To process POL sized material into post and pole lengths or to chip the material to be hauled away to one of our market locations. One landing site will be most useful in the area north of the building site for the removal of the material on the western edge of the unit. A second landing area will need to be located in the area across the drainage to the south of the building site at this location the material in the southern part of the unit can be processed for chips or POL. A third location will be along the old road bed that follows the southern edge of the drainage and as close to the boundary between units one and two as possible. The material that is brought to this location will be from the southeast corner of unit one and the south west corner of unit two. A fourth landing site will possibly be needed on the northern part of the unit at the site of the old campground for the material in that part of the unit. Some of the material in the northern part of unit two may also need to come to this location.

Due to the marshy meadows located in the central part of unit one, the best time of the year to perform the work prescribed in this unit would be in late January and February, when the ground is frozen. This will minimize ground disturbance as well as contamination of the water in the drainage. Any terrain that is not accessible with mechanical equipment will be treated by conventional means. All hand piles created on inoperable terrain will be burned at a time when conditions allow. Large slash piles created in landing sites will be burned when a dozer is present to insure safety and a complete burn of all material. Baker Timber Products reserves the right to determine if ground conditions are favorable for mechanical equipment to operate safely. There is a possibility that all material can be removed and cleaned up 100% in the landing sites for

biomass utilization. This would eliminate the need for burning large piles therefore, lowering liability costs. Eliminating ground sterilization and less need for weed control in the future.

Unit 2. 45 Acres.

Unit 2 is the roughest unit on the Keystone Wye project. This unit will have the most conventional work of the three units. Two landing sites are possible in this unit. One at the extreme north end near the old highway where all of the material from the small triangle section of the unit will be processed at this location, as well as some of the material in the north eastern part of unit one. Some of the material from the northern part of the larger section of unit two will also be processed in this location. A second location for a landing site will be at the southeast corner of the unit. Material in the southwest corner of the unit will be processed at the landing space in the southeast corner of unit one. Much of the terrain in this unit is extremely rocky and steep. In these areas the treatment will be done by conventional means and none of the material will be recovered for utilization. Any terrain that is not accessible with mechanical equipment will be treated by conventional means. All hand piles created on inoperable terrain will be burned at a time when conditions allow. Large slash piles created in landing sites will be burned when a dozer is present to insure safety and a complete burn of all material. Baker Timber Products reserves the right to determine if ground conditions are favorable for mechanical equipment to operate safely. There is a possibility that all material can be removed and cleaned up 100% in the landing sites for biomass utilization. This would eliminate the need for burning large piles therefore, lowering liability costs. Eliminating ground sterilization and less need for weed control in the future.

Unit 3. 50 acres

The 50 acre unit of the Keystone Wye project will need to be accessed at two locations; one off of highway 16A, and another from the county yard near the north corner of the unit. A landing site will be needed in this area to access the material at the northeastern end of the unit. Other landing sites will be needed along the access road through the unit from highway 16A. This will allow mechanical removal of material on the southern and southeastern parts of the unit. We may also be able to remove more material by mechanical means from the western part of the unit, if access is granted by the bordering landowner on the north western edge of the unit. This unit is possibly the best unit as far as mechanical treatment goes. Any terrain that is not accessible with mechanical equipment will be treated by conventional means. All hand piles created on inoperable terrain will be burned at a time when conditions allow. Large slash piles created in landing sites will be burned when a dozer is present to insure safety and a complete burn of all material. Baker Timber Products reserves the right to determine if ground conditions are favorable for mechanical equipment to operate safely. There is a possibility that all material can be removed and cleaned up 100% in the landing sites for biomass utilization. This would eliminate the need for burning large piles therefore, lowering liability costs. Eliminating ground sterilization and less need for weed control in the future.

Skills – Qualification.

Baker Timber has several shear and feller buncher operators that are very good at selecting both dominant and co-dominant leave trees. Since we work on so much private property we involve our operators with many landowners looking for special esthetics. Most of

our operators have been through many of the local Best Management Practices (BMP) schools, as well as safety and first aid training sessions. Baker Timber has thirty five full time employees with four over twenty years and nine employees over ten years experience. We feel our wages, benefits, and straight-up treatment program provide us with a pool of very good employees. Many employees are cross-trained and have a wide variety of backgrounds from machine maintenance, forestry practices, and professional attitude. We also have an effective safety program with frequent safety meetings. Many of our employees are trained in first aid and we have one of the lowest workmen's comp ratings for 2701 and 2702 work comp codes in the state. We exceed all known Federal and State wage levels and benefits for our operators. If awarded this contract Mike Stoner, Jack Baker, and myself, Bob Baker will be named contractor representatives. Any sub-contractor shall have a crew leader present. We have worked with Dakota Pine Thinning on a wide variety of projects over the past years, and are more than qualified to do the work proposed in this bid.

Safety Plan.

Baker Timber prides itself in Safe Operating Procedures. All operators are required to read and pass a Safe Operating Procedure for operating any company vehicle or equipment. All operators are instructed to use proper safety techniques and gear appropriate to their job description. As mentioned above, all company pickups have a cell phone, business band radios, and many of the major pieces of equipment are radio equipped to keep communication open at all times.

All company crew pickups are equipped with first aid kits and each crew has at least one person trained in first aid. Baker Timber has an annual safety meeting and quarterly crew meetings to discuss any safety issues that arise. Baker Timber takes safety seriously and has the lowest SD experience rating of .73 for work comp codes #2703 and #2709, both conventional and mechanical logging codes.

Fire Prevention Plan.

All equipment, trucks and crew pickups are equipped with fire extinguishers. These same pickups and trucks and major pieces of equipment are equipped with radios and cell phones so that in the event of a fire, the fire can be reported and extinguished at once.

All equipment is maintained and cleaned on a regular basis to minimize a machine starting a fire. All machines, including trucks, are washed before coming to a new job to prevent weed spread. All maintenance is performed at the end of each shift to double as a machine cool down period to further prevent any machine fires. Baker Timber also honors all hoot owl schedules that either the Forest Service or BLM may post during high fire seasons. Any trash generated during maintenance is hauled out daily.

Subcontractors.

Baker Timber requires all subcontractors to have approved safety gear and must furnish Baker Timber with certificates of both liability and workmen's comp insurance, as well as abide by all conditions and regulations of the particular contract.

Insurance.

Baker Timber Products is a fully insured business and will provide Certificates of Insurance if awarded the project. Our insurance coverage will meet or exceed all coverage requested.

Environmental Impacts.

As mentioned above, we use only low ground pressure machines. We have found that Timbcos and three wheelers leave the least amount of impact on the remaining residual timber stand; also sheared stumps are safer and rot faster. Where needed and if needed, we water trap our skid trails. We also keep haul roads maintained and rolling dips, and water bars working. In case of deep snow we cut snow berms where needed to minimize water movement. We self-police ourselves during wet periods to minimize impact. All machine maintenance waste and camp waste is taken off the job daily. We have observed that many of the thinning units are in old timber sale units with many skid trails and landings already in place. We propose reusing these areas rather than impacting new areas. We take all impacts, environmental or otherwise, seriously. Any impact that can be minimized or eliminated with planning usually makes the job safer, look better, and is more cost effective. Also by implementing our harvest plan we will greatly reduce the impacts of fire, smoke, weed spread and erosion.

Conclusion

If there is any additional information needed to assist in the proposal evaluation process please do not hesitate to contact us. We are more than willing to help in any way possible. We have spent a lot of time blending the right type of management practices to complete this project in a fashion that is both environmentally beneficial as well as beneficial to the landowners' property protection from fire, bugs or any other natural disaster. Every effort will be made to insure both the satisfaction of the land owner, as well as the technical specifications of this project. Baker Timber Products prides itself on customer satisfaction. We look forward to working on this project and want to thank you for the opportunity to be considered for the work. Your careful consideration of the above proposal will be greatly appreciated.

Thank you,

Bob Baker
Baker Timber Products, Inc.

Keystone Wye



Legend

- KW Roads
- Conventional Areas
- Project Boundary